

EXHIBIT 28

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Victory Packaging, Adv. Proc. No.: 07-02551-rdd

Victory Packaging received electronic notice of the Final Extension Motion (Docket No. 18952). As confirmed by the Affidavit of Service for the Final Extension Motion, that motion was electronically served by KCC on October 2, 2009 on Ira L. Herman and John S. Brannon, both of Thompson & Knight LLP, as counsel for Victory Packaging. *Ex. 4, October 7, 2009 Affidavit of Service—Ex. B, 2002 List, p. 21 of 22 (Docket No. 18967)*. Additionally, Mr. Herman received an automatic ECF notice of the Final Extension Motion when that motion was filed on the docket. *Ex. 10, October 2, 2009 ECF Notice of Electronic Filing, p. 16 (Docket No. 18952)*. Further, both Mr. Herman and Mr. Brannon were also served with the Proposed Forty-Eighth Omnibus Hearing Agenda (Docket No. 18991), which specifically identified the Debtors' Final Extension Motion as Agenda item C(1). *Ex. 6, October 26, 2009 Affidavit of Service, Ex. B, 2002 List, p. 21 of 22 (Docket No. 19015); Ex. 5, October 21, 2009 Proposed Forty-Eighth Omnibus Hearing Agenda (Docket No. 18991)*. Victory Packaging does not claim that it did not receive the Final Extension Motion. Rather, in the Declaration of Leah Borrello, its Chief Financial Officer, Victory Packaging declares only that a review of its business records reveals no evidence that the Final Extension Motion was served “by overnight mail (or postage pre-paid US mail).”¹ *Ex. 28(a), July 12, 2011 Declaration of Leah Borrello, ¶ 3*. As stated above, Victory Packaging was served via two of its counsel, Ira L. Herman and John S. Brannon, Thompson & Knight LLP. Local Rule 5.2 of the Southern District of New York provides that “[a] paper

¹ Ms. Borrello's assertion is apparently premised on the notion that Victory Packaging was required to be served by overnight mail (or postage pre-paid U.S. mail) under paragraph 15 of the Supplemental Case Management Order (Docket No. 2883). For the reasons set forth in detail in the Omnibus Response and the Skadden Filings, that premise is erroneous.

served and filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5, served and filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.” *LR 5.2*.

Furthermore, Victory Packaging received relevant information advising that avoidance claims had been filed under seal and the time to serve the complaints and summonses had been extended. The Affidavit of Service for the Preservation of Estate Claims Procedures Motion confirms that Messrs. Brannon and Herman received electronic service of that motion (which motion was filed as Docket No. 8905) as counsel for Victory Packaging. *Ex. 11, August 10, 2007 Affidavit of Service—Ex. B, 2002 List, p. 19 of 20 (Docket No. 9039)*. Messrs. Brannon and Herman also received electronic service of the August 16, 2007 Preservation of Estate Claims Procedures Order (Docket No. 9105), which, among other things, (i) authorized the Debtors to file complaints in the adversary proceedings pertaining to avoidance actions under seal, (ii) stayed each adversary proceeding unless and until the Debtors made service of process on the respective defendants, and (iii) extended to March 31, 2008 the deadline under Federal Rule of Civil Procedure 4(m) by which the Debtors would have to serve process, so that the complaints would not be subject to dismissal under Federal Rule of Civil Procedure 4(m). *See Ex. 12, August 23, 2007 Affidavit of Service—Ex. B, 2002 List, p. 19 of 20 (Docket No. 9141)*. Similarly, Messrs. Brannon and Herman were electronically served with the subsequently filed (i) First Extension Motion (Docket No. 12922), *Ex. 13, March 4, 2008 Affidavit of Service—Ex. B, 2002 List, p. 20 of 21 (Docket No. 12970)*; (ii) First Extension Order (Docket No. 13277), *Ex. 14, April 1, 2008 Affidavit of Service—Ex. A, 2002 List, p. 20 of 21 (Docket No. 13315)*; (iii) Second Extension Motion (Docket No. 13361), *Ex. 15, April 16, 2008 Affidavit of Service—Ex. B, 2002*

List, p. 20 of 21 (Docket No. 13415); and (iv) Second Extension Order (Docket No. 13484), Ex. 16, May 6, 2008 Affidavit of Service—Ex. A, 2002 List, p. 19 of 20 (Docket No. 13540).

Moreover, Victory Packaging was served with the First Amended Plan Disclosure Statement, filed in December 2007. *Ex. 7, January 11, 2008 Affidavit of Service—Ex. W (Docket No. 11974); see also id. at Ex. EEE.* Further, on December 13, 2007, the Debtors filed a copy of the First Amended Plan Disclosure Statement publicly with their Form 8-K, Docket No. 11388. The First Amended Plan Disclosure Statement outlined in detail that preference claims were to be filed under seal, with service deferred until after the limitations period. As this Court discussed during the July 22, 2010 hearing, the Disclosure Statement, combined with the defendants' knowledge that they had in fact received preferential transfers, put the defendants on notice of the preference claim procedures at issue (as did the Extension Motions and Extension Orders) and on inquiry notice as to the need to monitor preference claim developments. *Ex. 8, July 22, 2010 Transcript, pp. 150-153.*

Through the information conveyed in the above filings, Victory Packaging cannot credibly deny knowledge that avoidance claims were filed, placed under seal and the summons had been extended. Victory Packaging was listed as one of Debtors' 50 largest unsecured creditors, along with Robert Bosch Corporation, PBR Automotive USA Pacific, HSS LLC, Philips Semiconductors, Applied Bio Systems, Methode and Timken. Moreover, Victory Packaging had every reason to anticipate that it was the target of one of the avoidance claims. As set forth in the complaint, Victory Packaging was a significant supplier who shortly before the chapter 11 petition was filed demanded modified payment terms and received over \$6 million in non-ordinary course avoidable payments. Victory Packaging received 3 large non-ordinary course payments of \$1,018,172.16, \$1,846,093.43 and \$2,477,875.00 on September 16, 2005,

September 30, 2005 and October 7, 2005, respectively, all within weeks of Delphi chapter 11 filing. *Ex. 28(b), Victory Packaging Transfer Details*. Undoubtedly, Victory Packaging understood the preference implications related to these transfers. Sophisticated creditors like Victory Packaging typically are well aware of prospects and risks of preference litigation and it seems unlikely that creditors like Victory Packaging could be surprised or caught off guard when such preference complaints are finally filed. *See In re TWA Inc. Post Confirmation Estate*, 305 B.R. 221, 227 (D. Del. 2004) (“[I]n large chapter 11 cases sophisticated creditors typically are well aware of prospects and risks of preference litigation. ... Thus, it seems unlikely that creditors could be surprised or caught off guard when such preference complaints are finally filed.”).

EXHIBIT A

THOMPSON & KNIGHT LLP

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New York, New York 10022

Telephone: (212) 751-3001

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Ira L. Herman

Jennifer A. Christian

Gabrielle E. Farina

Attorneys for Victory Packaging LP

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	:
	:
DPH HOLDINGS CORP., et al.,	:
	:
Reorganized Debtors.	:
-----X	
DELPHI CORPORATION, et al.	:
	:
Plaintiffs,	:
	:
-against-	:
	:
VICTORY PACKAGING and	:
VICTORY PACKAGING LP,	:
	:
Defendants.	:
-----X	

**DECLARATION OF LEAH BORRELLO IN SUPPORT
OF VICTORY PACKAGING LP'S OPPOSITION TO REORGANIZED DEBTORS'
MOTION FOR LEAVE TO FILE AMENDED COMPLAINTS**

LEAH BORRELLO, hereby declares, pursuant to 28 U.S.C. § 1746:

1. I am currently the Chief Financial Officer of Victory Packaging LP ("Victory") and have substantial knowledge regarding Victory's relationship with Delphi Corporation and its affiliates (collectively, the "Debtors").



2. I submit this Declaration in connection with the above-captioned bankruptcy case and adversary proceeding in support of (a) Victory's Opposition (the "Opposition") to the Reorganized Debtors' Motion for Leave to File Amended Complaints (the "Motion to Amend"), and (b) Victory's joinder [Docket No. 20713] in the motion to vacate the order [Docket No. 18999] (the "Fourth Extension Order") that was entered granting the *Supplemental Motion Pursuant to Fed. R. Bankr. P. 7004(a) and 9006(b)(1) and Fed. R. Civ. P. 4(m) to Extend Deadline to Serve Process for Avoidance Actions Filed in Connection with Preservation of Estate Claims Procedures Order* [Docket No. 18952] (the "Fourth Extension Motion").

3. A review of the business records maintained by Victory in the ordinary course reveals no evidence that Victory was served with any of the four Extension Motions by overnight mail (or postage pre-paid US mail).

4. Accordingly, Victory submits this Declaration and requests that the Court grant the motion to vacate the Fourth Extension Order and deny the Motion to Amend its complaint against Victory on a final basis.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2011

/s/ Leah Borrello

Leah Borrello

EXHIBIT B

Delphi
Pre Petition Wire Analysis Review Form

985

Vendor Name:	Victory Packaging	
Remit Duns:	[REDACTED]	
Date of Wire:	9/16/2005	(Actual wire date not date requested)
Amount of Wire	\$1,018,172.16	(Indicate currency if other than USD)
Source:	Treasury	(e.g. Treasury, ACS or Wire Room)

PAID
000675093
929-05
Adm 200509 11/18/11

What was intent of wire made above? (Place X in the most appropriate box below)

To Pay for Shipments Prior to Wire:	<input checked="" type="checkbox"/>
To Pay for Shipments Subsequent to Wire:	<input type="checkbox"/>
To Pay for Shipments both Prior & Subsequent:	<input type="checkbox"/>
Unknown Intent:	<input type="checkbox"/>

Please **attach** documentation in support of the above assessment of intent. Documentation may include but is not limited to the following types of documentation:

- Email correspondence indicating intent for wire
- Detail lists of invoices/shipments that are being remitted
- Letters/notes/memos indicating intent for wire
- Meeting/Phone conversation minutes that indicate intent
- E-Dacor listings indicating amount due at date of wire that match wire amounts
- Terms deviation requests that indicate wire amount and intent for wire

*Dan**NOT FOUND
IN DACORSYS*

Delphi
Pre Petition Wire Analysis Review Form

986

Vendor Name:	Victory Packaging		
Remit Duns:	XXXXXXXXXX		
Date of Wire:	9-30-05	(Actual wire date not date requested)	
Amount of Wire	\$1,846,093.43	(Indicate currency if other than USD)	
Source:	Treasury	(e.g. Treasury, ACS or Wire Room)	

*See enclosed
detail I drew
upon*
NO ACTION REQUIRED

What was intent of wire made above? (Place X in the most appropriate box below)

To Pay for Shipments Prior to Wire:	<input checked="" type="checkbox"/>
To Pay for Shipments Subsequent to Wire:	<input type="checkbox"/>
To Pay for Shipments both Prior & Subsequent:	<input type="checkbox"/>
Unknown Intent:	<input type="checkbox"/>

348 813-3479
MATT FAARWAK
Left message on 8/23/05
on 8/23/05 stating
for above.

Matt will
check for
file on Treasury

Please **attach** documentation in support of the above assessment of intent. Documentation may include but is not limited to the following types of documentation:

- Email correspondence indicating intent for wire
- Detail lists of invoices/shipments that are being remitted
- Letters/notes/memos indicating intent for wire
- Meeting/Phone conversation minutes that indicate intent
- E-Dacor listings indicating amount due at date of wire that match wire amounts
- Terms deviation requests that indicate wire amount and intent for wire

**Payment Term Deviation
Request Form**

Date: 10-07-2005

Subject: Request for Authorization for Deviation: (Check One)

☐ Standard Supplier Payment Terms
☒ Expedited Payment

From: Kraig Webber / Bjoern Goeke

Position: CTL Packaging/CM Material Mgmt

Division: Delphi A

Location/phone: 248-813-3049 // 248-813-1468

To: Delphi Supply Management Financial Manager (North America Only)
Or
Delphi Regional Financial Director

The following information is provided to support this request for a deviation from the Delphi Corporate standard supplier payment terms of second day of the second month (MNS-2) or to request an expedited payment. It has been approved and signed (see below) by the Vice President of the requester named above.

Supplier Information

Name: Victory Packaging
Address: 3555 Timmons Lane, Suite 1440, Houston, TX 77027
Phone: 713-961-3299
Contact: Benjamin Samuels, Vice Chairman
DUNS No.: Various

Contract Information

PO #: All (see attached file)
Contract Source Sys.: Packaging
Annual Purchase Value: \$2,000,000
Payment of ALL Aged Past Due Payments scheduled in DACOR due to a mistake by DGSM in changing Payment Terms as agreed and negotiated between Delphi and VP
Exp. Pymnt: \$2,477,875

Description of a commodity purchased or type of business conducted with the supplier:

Payment terms to be changed

From: Net 7, 4%
To: Net Immediate - Wire

Effective date:

From: 09-01-2005
To: 09-30-2005

Reason for deviation to standard payment terms: (Reference supplier financial situation, legal ramifications, if any; tax issues etc.)

Delphi owes VP the amount of \$2,477,875 in past due invoices for shipments between 09-01 and 09-30. These Past Due must be paid Net Immediate - Wire - due to an administrative mistake by DGSM to update the PO's and Releases accordingly. All shipments and proof of deliveries are in Dacor.

Requester: Bjoern Goeke

Name: Bjoern Goeke
Phone No: 248-813-1469 Fax No:

10-07-2005
Date

Approved: Dandra Veehan

Delphi Supply Management Financial manager (North America Only)
Or
Delphi Regional Financial Director

10/7/05
Date

Approved: Kevin Smith

10/7/05
MSegner

Tnum 879370

DELPHI AUTOMOTIVE SYSTEMS LLC

5725 Delphi Drive
Troy, Michigan 48098

Control Number: DAS-_____

October 7th, 2005

Ms. Cynthia Hewlett
Delphi Automotive Systems
5725 Delphi Drive
Troy, Michigan 48098-2815

Dear Ms. Hewlett:

Please accept this letter as your authority to charge the "Delphi Automotive Systems LLC." Account No. 361388594 maintained with Bank One Michigan in the amount of \$638,000.00 (six hundred thirty eight thousand dollars and zero cents), and to transfer said amount with good value on October 7th, 2005 to:

Bank: Bank of America
ABA Number: 111-000-025
Beneficiary: Victory Packaging, LP
Account #: [REDACTED]

Sincerely,

Authorized Signature

Countersignature

FARS should charge these funds to:

GRP	GL	GL SUF	SUB ACCT	PROD LINE
(2)	(4)	(5)	(11)	(4)
EW	1880	33000	00000000000	0000

Description of Transaction:	Payment of past-dues to Victory Packaging
Accounting Note:	
Unit/Staff G/L Account Contact:	Brad Nielsen 248-813-2590 (phone) / 248-813-2410 (fax)
DELPHI-T.O. Contact:	Cynthia Hewlett 248-813-3340 (phone) / 248-813-3381 (fax)

LLC wire letter

1/V ID 10/07

Approve
MSB 10/7/05

321
10/10/05

321 (for D. Brown)
10/20/05
MSB

09/13/05 15:50 FAX

DELPHI AUTOMOTIVE

001/001

Pg 14 of 14

**Payment Term Deviation
Request Form**Date: 09-13-2005

Subject: Request for Authorization for Deviation: (Check One)

☐ Standard Supplier Payment Terms☒ Expedited PaymentFrom: Kraig Webber / Bjoern GoekePosition: CTL Packaging /CM Material MgmtDivision: Delphi ALocation/phone: 248-813-3049 // 248-813-1468To: Delphi Supply Management Financial Manager (North America Only)

Or

Delphi Regional Financial Director

The following information is provided to support this request for a deviation from the Delphi Corporate standard supplier payment terms of second day of the second month (MNS-2) or to request an expedited payment. It has been approved and signed (see below) by the Vice President of the requester named above.

Supplier InformationName: Victory PackagingAddress: 3535 Timmons Lane, Suite 1440, Houston, TX 77027Phone: 713-961-3299Contact: Benjamin Samuels, Vice ChairmanDUNS No.: Various**Contract Information**PO #: AllContract Source Sys.: PackagingAnnual Purchase Value: \$2,000,000

Description of a commodity purchased or type of business conducted with the supplier:

Payment terms to be changedFrom: Net 30, 1%To: Net 7, 4%

(23)

Effective date:From: 09-14-2005To: 10-31-2005

Reason for deviation to standard payment terms: (Reference supplier financial situation, legal ramifications, if any; tax issues etc.)

Supplier is concerned about Delphi's financial termsRequester: Bjoern Goeke

Name

Phone No: 248-813-1469Fax No: 248-813-146809-13-2005

Date

Approved: Benjamin Samuels

Delphi Supply Management Financial manager (North America Only)

Or

Delphi Regional Financial Director

9/13/05

Date

Approved: Kevin Smith

Vice President, Delphi Global Supply Management

9/13/059/13

Date